IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. V.L. (DOB 11-14-88), Appellant.	)	No. 57036-6-I
	)	DIVISION ONE
	)	UNPUBLISHED OPINION
	)	FILED: August 21, 2006

PER CURIAM – A juvenile court convicted V.L. of third degree theft for taking her mother's cell phone overnight without permission. V.L. appeals, arguing that insufficient evidence supports her conviction and that the trial court's failure to file written findings of fact and conclusions of law requires dismissal. But a rational trier of fact could reasonably infer from V.L.'s mother's testimony that V.L. knowingly took the cell phone without permission with the intent to deprive her mother of its use, even if only temporarily. And V.L. fails to show actual prejudice resulting from the absence of written findings and conclusions. We affirm and remand for the trial court to file findings and conclusions.

FACTS

On the morning of May 14, 2005, Page Bird called 911 and reported that her 16-year-old daughter V.L. had run away the previous evening and had taken Bird's cell phone.[1] Later on the 14th, Bird reported that V.L. had returned home with the cell phone. Bird wanted V.L. prosecuted for the theft of her phone, and on June 15, 2005, the Whatcom County prosecutor filed an information charging V.L. with theft in the third degree.

At the juvenile hearing held September 20, 2005, Bird testified that she was worried about excessive phone bills, so she kept her cell phone in her purse and only let V.L. use it when she asked to call her father. In those instances, Bird would dial the father's phone number, hand V.L. the phone, and then get the phone back when V.L. was finished. She stated that she told V.L. numerous times about the highly restrictive phone policy. She noticed the phone was missing the evening of the 13th when she wanted to call another daughter in California. Bird said she did not give V.L. permission to use the phone on May 13.

Bird stated she called police later on May 14 to tell them V.L. had returned, but she could not remember exactly what she told them and did not remember what happened when her daughter returned home. The following exchange took place between the prosecutor and Bird:

Q: Did you ever receive your phone back again?

A: Yes I did.

Q: And how did you receive your phone?

[1] Bird said that she did not call police until May 14 because V.L. had run away on previous occasions and always returned.

A: You can't quote me on this, I mean like I said I can't really remember but I believe she handed me the phone.

Q: When you say [you] believed she handed you the phone, what do you mean by believed she –

A: Well . . . there's been . . . other occasions where she had taken the phone, like I said without authorization, and . . . when I ask her about it she usually hands me the phone. So I believe that on that particular day she had handed me the phone.

On cross-examination, Bird said she did not see V.L. take the phone on May 13. Defense counsel then asked her whether it was her "opinion that she was the one that took it," and Bird said "[o]bviously." She reiterated that she could not remember exactly how V.L. returned the phone, but her best guess was that V.L. had simply handed it to her as on previous occasions. On redirect, Bird said her other two children living with her had access to the phone, but they never used it and she had no reason to think they took it.[2] She also explained why V.L. "obviously" took the phone on the 13th: "because when I asked her about the phone [after she returned home on the 14th], and like I said I can't remember if she had, I am pretty sure she had handed me, you know, the phone. She had it in her possession."

In closing argument, defense counsel assumed the State had proved that V.L. took the phone, but argued it had failed to prove V.L. intended to deprive Bird of the use of the phone since she returned it the next day and Bird had a land line she could use.[3] In an oral ruling, the trial court commissioner convicted V.L. and imposed a

[2] Bird stated that her autistic daughter would rummage through her purse, but that Bird watched her on these occasions and her daughter would not touch her cell phone.

[3] Defense counsel stated

And I am not going to insult anyone's intelligence about talking about whether or not we have a phone that [V.L.] did or didn't take. What I think . . . we

standard range disposition including 12 months' community supervision. The commissioner did not file written findings of fact and conclusions of law.

DISCUSSION

V.L. argues there was insufficient evidence to convict her because her mother only speculated that she took the cell phone. She also argues that we must reverse and dismiss the case because the trial court failed to file written findings of fact and conclusions of law as required by JuCR 7.11(d).

I. Sufficiency of the Evidence

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits a rational trier of fact to find the elements of the crime beyond a reasonable doubt.[4] We assume the truth of the State's evidence and all inferences that can reasonably be drawn from it.[5] Circumstantial and direct evidence are equally reliable.[6] We defer to the trier of fact's evaluation of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.[7]

"A person is guilty of theft in the third degree if he or she commits theft of property or services which (a) does not exceed two hundred and fifty dollars in value."[8] "Theft" means "[t]o wrongfully obtain or exert unauthorized control over the property or

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should address is whether or not there was an intent to deprive her mother of her property. Now I submit that [V.L.] being gone over the night having her mother's phone and then returning the phone negates the element of intent to deprive her mother of her phone. . . .

[4] State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003).

[5] State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

[6] State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

[7] State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107 (citing State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, review denied, 119 Wn.2d 1011 (1992)), review denied, 141 Wn.2d 1023 (2000).

[8] RCW 9A.56.050(1).

services of another or the value thereof, with intent to deprive him or her of such property or services."[9] The State is not required to show that the defendant intended to permanently deprive the owner of his or her property or services.[10]

Bird's testimony made clear that V.L. knew she could not use the cell phone except to call her father, and even then she had to ask for permission and return the phone as soon as she was finished talking. Bird could not find her phone after V.L. ran away and had no reason to think her other children took it. Although Bird could not remember exactly how V.L. returned the phone to her after arriving home on May 14, i.e., whether she handed it to her or put it on a table, Bird was clear that V.L. had the phone in her possession when she returned home. In other words, while she assumed V.L. took the phone with her when she left on May 13, she *knew* that V.L. returned home with the phone on the May 14. Defense counsel even conceded that V.L. had taken the phone when she ran away on the 13th. The evidence allowed a rational trier of fact to find beyond a reasonable doubt that V.L. knowingly took Bird's phone without permission when she left the house on May 13 and that she did so with the intent to deprive her mother of the use of the phone, even if only temporarily.

II. Absence of Written Findings and Conclusions

JuCR 7.11(d) reads as follows:

> (d) **Written Findings and Conclusions on Appeal.** The court shall enter written findings and conclusions in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision. The findings and conclusions may be entered after the notice of appeal is filed. The prosecution must submit such findings and conclusions within 21 days after receiving the juvenile's notice of appeal.

[9] RCW 9A.56.020(1)(a).
[10] See State v. Komok, 113 Wn.2d 810, 817, 783 P.2d 1061 (1989).

JuCR 7.11(d) does not provide a remedy for a court's failure to file written findings and conclusions. But the Washington Supreme Court has held in markedly similar situations that dismissal is only appropriate if the petitioner demonstrates actual prejudice.[11] V.L.'s reliance on State v. Naranjo[12] and State v. McCrorey[13] is misplaced, as those cases were abrogated by the Supreme Court's decision in State v. Head.[14] In Naranjo, Division Three held that reversal was required where there was a complete lack of written findings and conclusions under JuCR 7.11(d).[15] In McCrorey, Division One held that a complete disregard for a rule requiring written findings and conclusions mandated reversal.[16] But the Head court discussed various inconsistent Court of Appeals' decisions, including Naranjo and McCrorey, when addressing the remedy for noncompliance with court rules requiring written findings and conclusions.[17] It held that the failure to enter written findings and conclusions as required by CrR 6.1(d) required remand for entry of written findings and conclusions.[18] It clarified that reversal is only appropriate where a petitioner "can show actual prejudice resulting from the absence of findings and conclusions or following remand for entry of the same."[19]

V.L. does not demonstrate that she has been prejudiced by the absence of

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[11] See State v. Head, 136 Wn.2d 619, 624, 964 P.2d 1187 (1998) (discussing failure to file under CrR 6.1(d)); State v. Royal, 122 Wn.2d 413, 423, 858 P.2d 259 (1993) (petitioner must show actual prejudice resulting from late filing under JuCR 7.11(d)).

[12] 83 Wn. App. 300, 921 P.2d 588 (1996).

[13] 70 Wn. App. 103, 851 P.2d 1234, review denied, 122 Wn.2d 1013 (1993).

[14] 136 Wn.2d 619, 964 P.2d 1187 (1998).

[15] 83 Wn. App. at 302.

[16] 70 Wn. App. at 116.

[17] Head, 136 Wn.2d at 624 n.2.

[18] Id. at 624. CrR 6.1(d) mandates that the trial court enter findings of fact and conclusions of law in a case tried without a jury.

[19] Id.

written findings and conclusions. It did not prevent her from filing a timely appeal, and, as demonstrated by our analysis of the substantive issue she raised, it did not prevent or alter our review of her insufficient evidence claim. The trial court's oral ruling clearly states its rationale for finding V.L. guilty, and the evidence supports that decision. We affirm and remand for entry of written findings and conclusions as required by JuCR 7.11(d).

For the Court: